

Serial No. 10/788,469
Response dated April 2, 2007 in
Reply to Office Action of November 1, 2006

Amendments to the Drawings:

The attached first sheet of drawings includes changes to Figure 11. This sheet replaces the original sheet including Figures 11 and 12.

The attached second sheet of drawings includes changes to Figure 16. This sheet replaces the original sheet including Figures 15 and 16.

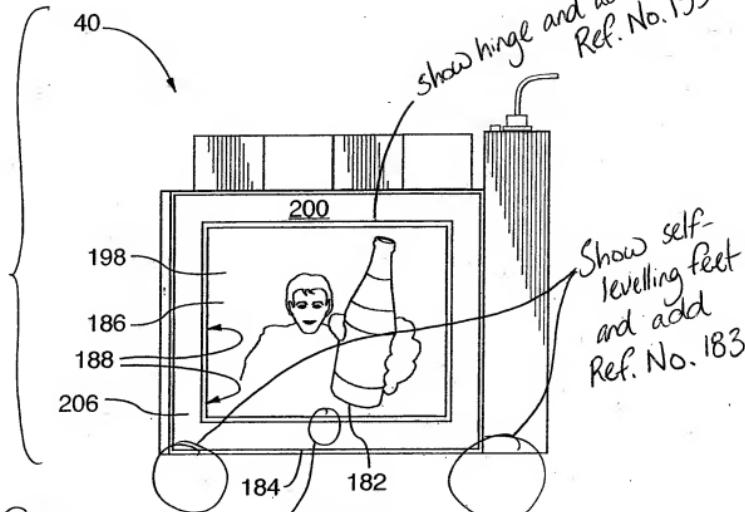
Attachment: Two Drawing Replacement Sheets

For the convenience of the Examiner in identifying the exact nature of the amendments to the drawings, on the following two pages, the Applicant provides a marked-up copy of each Replacement Sheet (each being labelled as an "Annotated Sheet") including annotations indicating the changes made to the previous version.

Annotated Sheet

11/27

Changes to
Fig. 11



40
Show latch and add Ref. No. 201

No
Changes to
Fig. 12

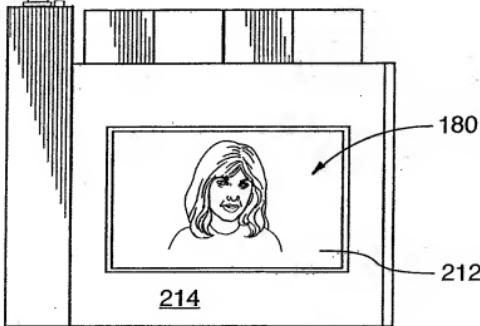


FIG.12

Annotated Sheet

14/27

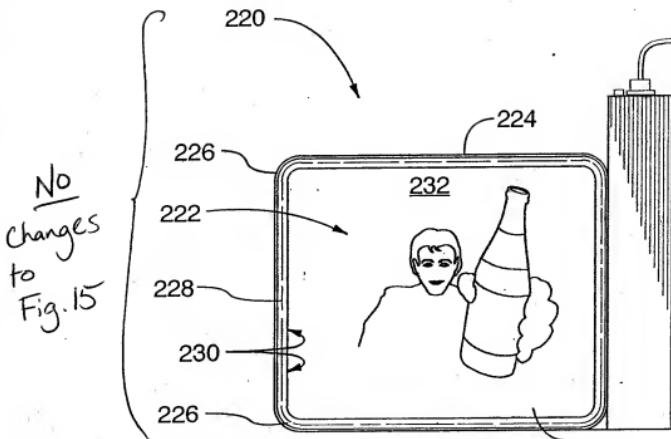


FIG. 15

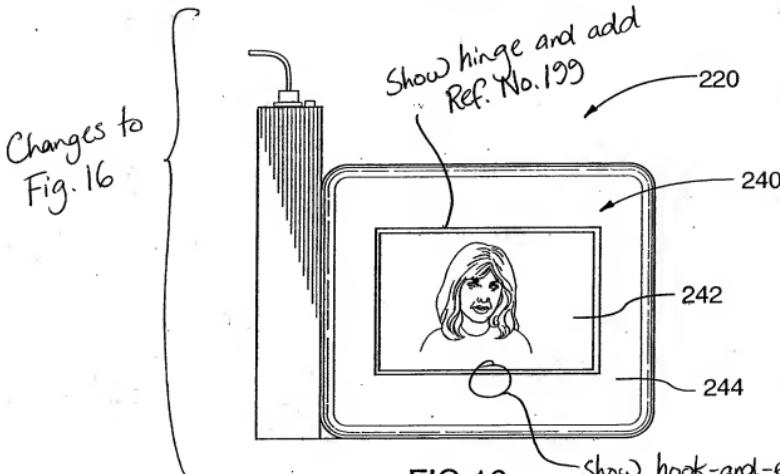


FIG. 16

REMARKS/ARGUMENTS

Information Disclosure Statement

Please find attached with this response an Information Disclosure Statement which is respectfully submitted by the Applicant, pursuant to 37 CFR § 1.97(c)(1), for consideration by the United States Patent and Trademark Office.

Also attached is a copy of the document referenced in the Information Disclosure Statement – being, to the best of the Applicant's knowledge, a true and accurate translation (hereinafter, the "Translation") of cited German Patent No. 3,705,322 (Mehlinger). The Applicant has, at its own personal expense, obtained the attached Translation only within the last two months.

Accordingly, pursuant to 1.97(e)(2), the Applicant respectfully states that no item of information contained in the attached Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the Information Disclosure Statement.

Amendments to the Abstract

In the aforementioned Office action, the Examiner required amendment of the Abstract, pursuant to MPEP § 608.01(b), to delete the legal phraseology "present invention".

Accordingly, and in full compliance with the Examiner's requirement, the Abstract has been so amended.

Amendments to the Drawings

Responsive to the Examiner's objection under 37 CFR § 1.83(a), amendments to original Figures 11 and 16 are submitted in order to show the following claimed limitations:

- (A) the hinged connection 199 of the panel portion to the frame member [see Claim 25];
- (B) the hook-and-eye 203 closure member [see Claim 29]; and
- (C) the self-levelling feet 183 [see Claim 86].

The Applicant has also currently amended Figure 11 to show the latch 201 closure member that is disclosed in Paragraph No. 0087 of the Specification as originally filed.

The Applicant respectfully submits that support for each of the aforesaid drawing amendments may be drawn from each of the aforementioned claims, and/or from Paragraph Nos. 0054, 0086, and/or 0087 of the Specification as originally filed, and as such, that no new matter has been entered.

In the aforementioned Office action, the Examiner also objected to the drawings for failing to show the following claimed limitations: (i) a hexagonal housing [see original Claim 45], and (ii) an octagonal housing [see original Claim 46]. With this response, therefore, the Applicant has now canceled both of originally filed Claims 45 and 46.

As such, in view of all of the foregoing, the Applicant respectfully requests reconsideration and withdrawal of each of the Examiner's previous objections under 37 CFR § 1.83(a).

Amendments to the Specification

The Applicant has currently amended Paragraph Nos. 0054, 0086 and 0087 of the Specification to reference the self-levelling feet 183, the hinged connection 199, and the latch 201 and hook-and-eye 203 closure members with the corresponding designated reference numerals which are newly shown in the currently amended drawings (discussed above). The Applicant respectfully submits that no new matter has been entered with these amendments.

Next, the Applicant respectfully notes that in the aforementioned Office action, the Examiner also objected to the Specification, pursuant to 37 CFR § 1.75(d)(1) and pursuant to MPEP § 608.01(o), for purportedly having failed to provide a proper antecedent basis for the claimed subject matter of Claim 52 – i.e., control means operable to engage the locking means to maintain the inlet door in the closed position while the lifting means moves the pallet support means. In this regard, the Applicant respectfully directs the Examiner's attention to Paragraph No. 0068 of the Specification where it is specifically recited that "[...] it may be desirable for the control means 58 to be operable to engage the locking means 102 to maintain the inlet door 96 in the closed position 100 while the lifting means 52 moves the pallet support means 50." In view of this passage, the Applicant respectfully submits that the Specification, as originally filed, provides proper antecedent basis for the claimed subject matter of Claim 52.

Paragraph No. 0059 of the Specification has also been amended to provide further particularity concerning the locking means – i.e., to specifically disclose that “suitable locking mechanisms” may include electrically actuatable locking mechanisms. The Applicant respectfully submits that same would have been understood by persons having ordinary skill in the art as inherent in the originally filed specification, drawings, and claims. It is respectfully submitted that no new matter has been added with the aforesaid amendment, and that support for this amendment may be drawn, *inter alia*, from Paragraph No. 0059 of the Specification, as originally filed, where it is expressly stated that “[w]hile in the preferred embodiment, the locking means 102 includes a latch mechanism 103, it will be appreciated that any suitable locking mechanism may be employed.” In further support of the inherency of the aforesaid amendment to make specific mention of electrically actuatable locking mechanisms – and of the Applicant’s respectful position that persons having ordinary skill in the art would have understood the phrase “suitable locking mechanisms” to include electrically actuatable locking mechanisms – the Applicant also respectfully directs the Examiner’s attention to Appendix “A” to this Response, being a partial reproduction of the definition of the word “lock” as taken from page 1328 the *Merriam-Webster’s Third New International Dictionary Unabridged* (1986), which states that a lock is

“a fastening (as for a door [...]) in which a bolt is secured by any of various mechanisms and can be released [...] by operating a special device (as a [...] magnetic solenoid)”.

In view of even this very rudimentary definition of the word “lock”, the Applicant respectfully submits that persons having ordinary skill in the art would have understood the phrase “suitable locking mechanisms” to include at least locks which are actuatable by magnetic solenoids (i.e., a specific type of electrical actuator). Thus, it is

also the respectful submission of the Applicant that, since such persons would have understood "suitable locking mechanisms" to include electrically actuatable locking mechanisms, no new matter has been added with the aforesaid amendment to Paragraph No. 0059 of the Specification.

Next, the Applicant respectfully notes that Paragraph No. 0068 of the Specification is currently amended to more specifically disclose that the control means is operable to disable the locking means. It is respectfully submitted that support for this amendment may be drawn, *inter alia*, from Paragraph Nos. 0059 and 0068 of the Specification as originally filed. In this regard, the Applicant respectfully submits that persons having ordinary skill in the art would have understood it to be inherent in the Applicant's original disclosure – (A) that the control means may engage an electrically actuatable locking mechanism, and (B) that the inlet door may be maintained in a closed position while the lifting means moves the pallet – that the control means may electrically disable the electrically actuatable lock in such circumstances. In view of the foregoing, therefore, it is the Applicant's respectful submission that no new matter has been added with the aforesaid amendment.

Amendments to the Claims

Claims 1-2, 5-6, 8-44, and 47-110 remain in this application. Claims 3-4, 7 and 45-46 have been canceled. Claims 11, 35-59, 60-73, 103 and 106 were previously withdrawn as the result of an earlier restriction requirement, but the Applicant still retains the right to re-introduce these claims into the present application upon a finding of allowability in respect of any generic claim, or to re-present these claims in a later filed continuation or divisional application. Claims 5, 8, 52 and 88-90 are currently amended.

Claim Objections - 37 CFR § 1.75(c)

In the aforementioned Office action, Claim 8 was objected to under 37 CFR § 1.75(c) for failing to further limit the subject matter of a previous claim. As such, Claim 8 is currently amended to modify its dependency, and to clarify that four outer faces carry the promotional message. In view of these amendments, the Applicant respectfully requests reconsideration and withdrawal of the Examiner's previous objection to Claim 8 under 37 CFR § 1.75(c).

Claim Rejections - 35 USC § 112, Second Paragraph

In the aforementioned Office action, Claim 52 was objected to, under 35 USC § 112, second paragraph, for failing to clearly state, *inter alia*, how the control means is operable to maintain the inlet door in the closed position. Accordingly, Claim 52 is currently amended to more specifically recite that the locking means includes an electrically actuatable locking mechanism, and that the control means is operable to electrically disable the electrically actuatable locking mechanism to maintain the inlet door in the closed position while the lifting means moves the pallet support means. At this time, the Applicant respectfully reiterates by reference, *mutatis mutandis*, each of its aforesaid submissions concerning the current amendments to Paragraph Nos. 0059 and 0068 of the Specification. Moreover, it is respectfully submitted that no new matter has been added with this amendment, and that support for same may be drawn, *inter alia*, from Paragraph Nos. 0059 and 0068 of the Specification as originally filed.

Claims 88-90 were also objected to, under 35 USC § 112, second paragraph, for failing to clearly state what the method/process is intended to encompass. Accordingly, with this response, each of Claims 88-90 has been amended to recite two active and positive steps – delimiting how the claimed use is actually practiced – namely, a positioning step and a display step.

In view of the aforesaid amendments and the foregoing submissions, the Applicant respectfully requests reconsideration and withdrawal of each of the Examiner's previous objections to Claims 52 and 88-90 under 37 USC § 112, second paragraph.

Claim Rejections - 35 USC § 103

In the aforementioned Office action, the Examiner raised a number of "obviousness" objections against various claims, under 35 USC § 103(a), namely, as follows:

- (i) Claims 1-2, 4-10, 12-34, 40-54, 74-78, 83-94, 102, and 107 as being unpatentable over the cited Mehlinger, Skolasinski, and Champion references;
- (ii) Claims 55-59 and 95-101 as being unpatentable over the cited Mehlinger and Underbrink references; and
- (iii) Claims 79-82 as being unpatentable over the cited Mehlinger and Claassen references.

The Applicant respectfully notes that the cited Mehlinger reference is common to all of the Examiner's above-noted obviousness objections.

At the outset, the Applicant also respectfully notes that the cited Mehlinger reference is a German patent, which was listed in an International Search Report (ISR) that was issued in respect of the Applicant's international application number

PCT/CA2004/000298, which international application also claimed priority from the same U.S. provisional patent applications as the present application, namely, U.S. Provisional Patent Application Serial Nos. 60/450,686 and 60/465,681, which were filed on March 3, 2003 and on April 25, 2003 respectively. In the ISR, the abstract and figures of the cited Mehlinger reference were then held to define the general state of the art, *only*. That is, the International Searching Authority, quite notably, did not deem the cited Mehlinger reference to be of any particular relevance to the Applicant's invention.

Because the cited Mehlinger reference is central to each of the Examiner's above-noted obviousness objections, the Applicant has obtained (and encloses herewith) an English-language translation of the entire document (alternately referenced herein as the "Translation"). From the Translation, it is apparent that the cited Mehlinger reference relates, generally, to a refrigerated pallet-receiving unit that includes a lifting means.

The Applicant shall first respectfully address the Examiner's "obviousness" rejection of Claims 1 and 91-92, among others, as being unpatentable over a combination of the cited Mehlinger, Skolasinski, and Champion references. In this regard, the Applicant respectfully submits that, because the cited Mehlinger reference relates to a refrigerated cabinet, it would not have been obvious for persons having ordinary skill in the art to combine this reference with either of the cited Champion and Skolasinski references (neither of which makes any specific disclosure of potential uses in refrigerated contexts).

The Applicant's position that it would not have been obvious for persons having ordinary skill in the art to combine the cited Mehlinger reference with either of the cited Champion and Skolasinski references is further supported by each of the following

specific "teachings away" from such a combination, which are contained in the references:

1. The cited Mehlinger reference discloses a cover 14 (see Figure 2) that is provided with an advertising inscription. The cover 14 is *unrolled* when the supporting arm of the Mehlinger device is lifted. That is, the cited Mehlinger reference specifically teaches a dynamic advertising medium that does not cover or encapsulate the product, but rather one that only covers the "dead space" *below* the product, with the advertising medium dynamically extending upward (i.e., being unrolled) as the product is lifted. In teaching such a dynamically unrolling advertising medium, the cited Mehlinger reference *teaches away* from advertising display surfaces of a more "static" nature, i.e., advertising displayed from the fixed outer faces of a housing.
2. Perhaps even more importantly, the cited Mehlinger reference also teaches away from any advertising message which might cover the product that is placed on the skid. Instead, Mehlinger discloses only that the advertising message might be displayed in the dead space below the raised skid. Indeed, the chilled product on the Mehlinger device is accessed – not from the top of the unit (which is covered) – but by opening one of the glazed lateral side surfaces 3 thereof. In fact, it is essential to the cited Mehlinger reference that these lateral side surfaces 3 remain substantially unobstructed, in order that the product on the skid, in keeping with one of the main objectives of the Mehlinger reference, might be clearly and readily presented to consumers at all times. In addition, it is respectfully submitted that the solid rear walls 2 of refrigerated cabinets, including those of the general type disclosed by Mehlinger, are generally placed out of view of customers, such that the "outer" faces thereof would be of no use whatsoever as advertising surfaces.

3. The cited Mehlinger reference spends a great deal of verbiage discussing the specific adaptations thereof which enable it for use in association with refrigerated cabinets. The Applicant respectfully submits that, in view thereof, it would not occur to persons having ordinary skill in the art to even *attempt* to extricate the skid lifting device of Mehlinger from the *sturdy* enclosure of its refrigerated cabinet. [In contradistinction, both the cited Champion and Skolasinski references disclose comparatively flimsy enclosures – one made of foldable cardboard and the other made from thin panel members.] Moreover, the Applicant respectfully submits that persons having ordinary skill in the art would not think it possible to remove the Mehlinger lifting device from the sturdy enclosure of its refrigerated cabinet. That is, the Applicant respectfully submits that it would not occur to such a person that the Mehlinger lifting device might be used as part of anything other than a refrigerated cabinet – and certainly not as part of one of the relatively flimsy devices which are disclosed in either of the cited Champion or Skolasinski references.
4. The cited Champion reference – quite apart from teaching uses in refrigerated contexts – specifically discloses that its “bin wrap” might be used with produce and other large items that must be displayed on the store floor within an otherwise unsightly bin. Such large items, far from being suitable and/or desirable to be refrigerated, might include watermelon, pumpkins, squash, and toys. As such, the Applicant respectfully submits that it would not have been obvious to persons having ordinary skill in the art to combine an upright-transparent-closed-side-door-accessible-refrigerated unit (as taught by the cited Mehlinger reference), with a squat-open-top-accessible-ambient-temperature unit (as taught by the cited Champion reference).

5. In addition, the cited Champion reference also specifically teaches that its relatively flimsy and/or foldable cover 21 may be sealed by *heat*-sensitive tape (Column 6, Line 43). It is respectfully submitted that, in teaching the use of *heat*-sensitive tape, the cited Champion reference specifically teaches away from a combination with the cited Mehlinger reference which is clearly for use in refrigerated contexts.

In view of all of the foregoing, the Applicant respectfully submits that it would not have been obvious to a person having ordinary skill in the art:

- (A) to combine the teachings of the cited Mehlinger reference with the teachings of the cited Champion and Skolasinski references; or
- (B) to combine the teachings of the cited Champion reference with the teachings of the cited Mehlinger reference.

Accordingly, it is the Applicant's respectful submission that it would not have been obvious to persons having ordinary skill in the art to combine the teachings of the cited Mehlinger, Champion and Skolasinski references to arrive at the subject matter of the invention.

Rather, the Applicant respectfully submits that at least both of the cited Mehlinger and Champion references contain teachings away, as aforesaid, from such a combination. In view of the specific teachings of the cited Mehlinger and Champion references, including *inter alia* as aforesaid, the Applicant respectfully submits that it would not have occurred to a person having ordinary skill in the art to combine the teachings of the cited references to arrive at an apparatus or method having each and every one of the features which are recited in independent Claims 1 and 91-92 of the Applicant's above-referenced U.S. patent application.

To recapitulate, in view of the submissions made above, the Applicant respectfully disagrees with the Examiner's finding that it would be obvious to combine the cited Mehlinger, Champion and Skolasinski references. Moreover, the Applicant respectfully submits that Claims 1 and 91-92 are directed to allowable subject matter, and requests reconsideration and removal of the Examiner's aforementioned objections thereto under 35 U.S.C. § 103(a).

Similarly, the Applicant also respectfully submits that Claims 2, 5-6, 8-10, 12-34, 40-44, 47-54, 74-78, 83-90, 93-94, 102, and 107, as depending directly or indirectly from one of Claims 1 and 91-92, are also now directed to allowable subject matter and, therefore, their reconsideration is also hereby respectfully requested.

Still further, the Applicant respectfully submits that Claims 55-59, 79-82 and 95-101, as depending directly or indirectly from one of Claims 1 and 91-92, are also now directed to allowable subject matter and, therefore, their reconsideration is also hereby respectfully requested.

Nonetheless, turning now to briefly further address the aforementioned obviousness objections against Claims 55-59, 79-82 and 95-101, the Applicant respectfully notes that, because the Champion and Skolasinski references have not been cited in leveling these objections, the proffered combinations of references – i.e., a combination of the Mehlinger reference with either (a) the Underbrink reference or (b) the Claassen reference – *fail* to disclose an apparatus having the following claimed limitations:

- (i) four upstanding walls [a recited claim limitation for each of Claims 55-59 and 79-82]; or

(ii) a display means for presenting a promotional message to a customer [a recited claim limitation for each of claims 55-59, 79-82 and 95-101].

As such, the Applicant respectfully submits that the cited combinations of references (a combination of the cited Mehlinger and Underbrink references, and a combination of the cited Mehlinger and Claassen references) fail to disclose an apparatus that possesses each and every one of the claimed limitations, i.e., of Claims 55-59, 79-82 and 95-101.

Moreover, the Applicant also respectfully submits that, for the reasons above (including, *inter alia*, that it would not have been obvious to combine the 'refrigeration' teachings of Mehlinger with the cited Champion and Skolasinski references), it would not have been obvious to a person having ordinary skill in the art to combine the cited Mehlinger, Champion, and Skolasinski references with *either* (a) the Underbrink reference, or (b) the Claassen reference.

In addition, and as an aside, the Applicant additionally believes that it may be worthwhile to contemporaneously respectfully submit that, notwithstanding any findings to the contrary in the enclosed Office action, a number of additional specific features of the Applicant's invention are not taught by the combinations of references that the Examiner has set forth. More particularly, the combinations of references fail to render obvious any of the following features of the Applicant's invention: (a) a display *panel frame fastened* to the upstanding housing walls that (b) may be selectively *opened* to (c) *interchange* promotional messages; a ramp that is *only* deployable (d) when the pallet support means is moved to a *lowered* position, *and* (e) when an inlet door in a housing is *opened*.

The Applicant respectfully submits that *each* of the aforesaid features, not being disclosed in any of the cited prior art, is *both* novel and inventive – i.e., over and above the novel and inventive display apparatus and method that are recited in independent Claims 1 and 91-92. As such, the Applicant respectfully submits that any one of the aforesaid features provides a further foundation to traverse the above-noted obviousness objections.

To recapitulate, in view of the submissions made above, the Applicant respectfully disagrees with the Examiner's finding that it would be obvious to combine the cited Mehlinger reference with either (a) the Underbrink reference, or (b) the Claassen reference, to arrive at an apparatus that possesses each and every one of the claimed elements of Claims 55-59, 79-82 and/or 95-101, as appropriate. Moreover, the Applicant respectfully submits that Claims 55-59, 79-82 and/or 95-101 are themselves directed to allowable subject matter, and requests reconsideration and removal of the Examiner's aforementioned objections thereto under 35 U.S.C. § 103(a).

The Applicant again respectfully notes its submission that Claims 55-59, 79-82 and 95-101, as depending directly or indirectly from one of Claims 1 and 91-92, are directed to allowable subject matter and, therefore, their reconsideration is also hereby respectfully requested.

In closing, the Applicant respectfully notes that all amendments made to the claims – unless specifically noted otherwise hereinabove – were made for the purposes of clarifying the claims, only, and were not made for reasons relating to 35 U.S.C. §§ 102 or 103.

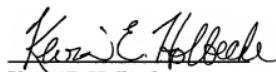
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Summary

Reconsideration of the above-identified application in view of the preceding amendments and/or remarks with a view toward timely issuance of a Notice of Allowance is respectfully requested. If after reviewing this response, the Examiner believes that a telephone or personal interview would facilitate the resolution of any remaining matters, the undersigned attorney may be contacted at the number set forth hereinbelow.

Respectfully submitted

Date: April 2, 2007



Kevin E. Holbeche
Registration No. 56,495
Tel: 416.307.4166

LANG MICHENER LLP
BCE Place, 181 Bay Street, Suite 2500
Toronto, Ontario
Canada M5J 2T7
Tel: 416.307.4166
Fax: 416.365.1719

KEH/ms

Encl.
Appendix "A"
Replacement Drawing Sheets
Petition for Extension of Time under 37 CFR § 1.136(a)
Fee under 37 CFR § 1.17(a)(2)
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